THE NINE PROJECTS
Excerpts from Item III (G) of the Will of Walter Havighurst Regarding Expenditures from Proposed Charitable Trust

1. Funding and promoting presentations to members of the general public on the Soviet Union;

2. Funding and promoting classes and presentations to Miami University students and children on various aspects of Soviet life;

3. Funding and promoting study groups and classes for Miami University students and adults on Soviet-American relations and contemporary Soviet society;

4. Funding and promoting presentations, seminars, and studies on relations between the governments of the United States and the Soviet Union;

5. Funding and promoting programs and classes dealing with conflict relationships at the international level;

6. Funding and promoting Miami University student, and group trips by members of the Oxford, Ohio community to the Soviet Union through a "sister city" program,

according to guidelines set forth by Sister Cities International, Washington, D.C.

7. Funding and promoting group trips to the Soviet Union to allow Miami University students, Oxford, Ohio citizens, and other Americans to meet and establish direct contact with municipal officials, industrial workers, educators, students, medical, legal, and other professionals, agriculturalists, and creative artists;

8. To promote and fund exchanges of children's artwork between Soviet and American children and to promote and to fund consultative services to municipalities and groups wishing to establish direct contact with Soviet people and their counterparts;

9. To establish and fund an endowed professorship of Soviet-American Relations at Miami University, Oxford, Ohio.

PROBATE COURT OF BUTLER COUNTY

FILED
94 MAR 15 PM 3:50
BUTLER COUNTY
PROBATE COURT
JUDGE STEPHEN W. POWELL

ESTATE OF WALTER E. HAVIGHURST, DECEASED
CASE NO. 94-0175 DOCKET_____ PAGE_____

INVENTORY AND APPRAISAL
[R.C.2115.02]

The fiduciary says that to his knowledge the attached schedule of assets in decedent's estate is complete. The fiduciary further says that he determined the value of those assets whose values were readily ascertainable and which were not appraised by the appraiser, and that such values are correct.

The estate is recapitulated as follows:

Tangible personal property	$ 300.00
Intangible personal property	$5,933,888.81
Real Estate	$ 195,000.00
Total	$6,129,188.81

Automobile transferred to surviving spouse under Revised Code Sec. 2113.532(A) .. $ N/A

Attached is a list of the surviving spouse, next of kin, legatees and devisees known to the fiduciary, which list includes

those persons entitled to notice of the hearing on this inventory.

(Check if applicable) - ☐ The surviving spouse is the sole legatee and devisee under decedent's Will, and has not manifested an intention to take against it. It is therefore unnecessary to cite the surviving spouse to make an election.

/s/ Dennis Walsh
Fiduciary

APPRAISER'S CERTIFICATE

The undersigned appraiser agreed to act as appraiser of decedent's estate, and to appraise the property exhibited to him honestly, impartially, and to the best of his knowledge and ability. The appraiser further says that he appraised those assets whose value were not readily ascertainable, indicated on the attached schedule by a check in the column "Appraiser" opposite each such item, and that such values are correct.

See attached
Appraiser

WAIVER OF NOTICE OF TAKING OF INVENTORY

The undersigned surviving spouse hereby waives notice of the time and place of taking the Inventory of decedent's estate.

PROBATE COURT OF BUTLER COUNTY

FILED
94 MAR 15 PM 3:50
BUTLER COUNTY
PROBATE COURT
JUDGE STEPHEN W. POWELL

ESTATE OF WALTER E. HAVIGHURST, DECEASED
CASE NO. 94-0175 DOCKET_____ PAGE_____

SCHEDULE OF ASSETS
[Attach to Inventory and appraisal]

Page 1 of ___ pages

[Insert a check in the column "Appraiser" opposite an item if it was valued by the appraiser. Leave blank if the readily ascertainable value was determined by fiduciary.]

Item	Appraiser	Value
INTANGIBLE PERSONAL PROPERTY: See Schedule A attached		$5,933,888.88
TANGIBLE PERSONAL PROPERTY:		
Household goods and Clothes		300.00
REAL ESTATE:		
Entire interest in real estate known as 163 Shadowy Hills Drive, Oxford, Butler County, Ohio		
See attached Exhibit B	X	195,000.00
	Total:	$6,129,188.81

PROBATE COURT OF BUTLER COUNTY

FILED
94 MAR 24 AM 9:51
BUTLER COUNTY
PROBATE COURT
JUDGE STEPHEN W. POWELL

ESTATE OF WALTER E. HAVIGHURST, DECEASED
CASE NO. 94-0175 DOCKET_____ PAGE_____

SECOND AMENDED
SURVIVING SPOUSE, NEXT OF KIN, LEGATEES AND DEVISEES
[R.C. 2106.13, 2106.13,2107.19]

(Use with those applications or filings requiring some or all of the information in this form, for notice or other purposes. Update as required.)

The following are decedent's known surviving spouse, and other known survivors who are or would be entitled to inherit under the statutes of descent and distribution.

Name	Residence Address	Relationship to Decedent	Birth-date of Minor
None		Surviving Spouse	
None		Children	
MIRIAM HAVIGHURST JOHNSON	229 W. Lincoln, Batavia, IL 60510	Sister	
RUTH NEFF	329 SW First St., Richmond, IN 47374	Niece	

DOROTHY KUCERA	9310 Hamlin Ave., Evanston, IL 60203	Niece
WALTER E. HAVIGHURST	338 W. 77th St., Apt. 5B, New York, N.Y. 10224	Nephew
JAMES P. HAVIGHURST	52 Rapaki Rd. Christchurch 2, New Zealand	Nephew
HELEN BERK	2301 Cheryl Dr. Jacksonville, FL 32217	Niece
ALAN W. HAVIGHURST	3071 Huntington Rd. Shaker Hts.,OH 44120	Nephew
DOUGLAS A. HAVIGHURST	1151 Haselton Rd. Cleveland Hts.,OH 44121	Nephew
(BRUCE J. HAVIGHURST)	DECEASED 8-2-90	Nephew
BRYAN HAVIGHURST*	20861 Byron Rd. Shaker Hts., Oh 44122	Grand-nephew
LAUREN HAVIGHURST*	Box 1513 Amherst College Amherst, MA 01002	Grand-niece

• Children of Bruce Havighurst

(Check whichever of the following is applicable:)

( ) The suriving spouse is the natural or adoptive parent of at least one of decedent's children.

( ) The surviving spouse is not the natural or adoptive parent of any of decedent's children.

( ) There are minor children of the decedent who are not the children of the survivng spouse.

( ) There are minor children of the decedent and no surviving spouse.

FORM 1.0A-Surviving Spouse, Next of Kin, Legatees and Devisees For Persons Deceased on or after May 31, 1990

COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

In the Matter of:
ESTATE OF
WALTER E. HAVIGHURST

Estate No. 94-0175

The First National Of Southwestern Ohio
Third & High Streets
Hamilton, OH 45011,
Exectuor

Plaintiff

-vs-

Miami University
Roudebush Hall
Oxford, Ohio 45056

and

Lee Fisher
Attorney General of the State of Ohio
Charitable Foundations Section
15th Floor, State Office Tower
30 East Broad Street
Columbus, OH 43266-0410

Necessary Party (O.R. C. 109.25)
and

Mariam Havighurst Johnson
229 N. Lincoln
Batavia, IL 60510

Judge Stephen Powell

COMPLAINT FOR DECLARATORY JUDGMENT

and

Ruth Neff
329 SW First St.
Richmond, IN 47374
and

Dorothy Kucera
9310 Hamlin Ave.
Evanston, IL 60203
and

Walter M. Havighurst
338 W. 77th St. Apt. 5B
New York, N.Y. 10224
and

James P. Havighurst
52 Rapaki Rd.
Christchurch 2, New Zeland
and

Helen Berk
2301 Cheryl Dr.
Jacksonville, FL 32217
and

Alan W. Havighurst
3071 Huntington Rd.
Shaker Hts., OH 44120
and

Douglas A. Havighurst
1151 Haselton Rd.
Cleveland Hts., OH 44121
and

Bryan Havighurst
20861 Byron Rd.
Shaker Hts., OH 44122
and
Lauren Havighurst
Box 1513 Amherst College
Amherst, MA 01002
and
Samuel Neff
329 SW First St.
Richmond, IN 47374
and
Douglas O. Wilson
218 Kenler Ave.
Bloomington, IN 47408

Defendants.

---

1. The Last Will and Testament (the "Will") of Walter E. Havighurst (the "Testator"), dated September 7, 1988, and a Codicil thereto dated October 11, 1989, were admitted to probate in this Court on February 11, 1994. This Will of the Decedent created a testamentary Charitable Trust, herein referred to as the "Walter E. Havighurst Fund" (a "Charitable Trust", which by Plaintiff's terms gives certain assets, in trust, to the Plaintiff, The First National Bank of Southwestern Ohio [the "Trustee"].) A copy of the Will and Codicil is attached hereto as Exhibit "A".

2. The Will specifies inter ACIA [sic], that the income and principal if necessary, be

used by the Trustee "…to promote and fund educational projects through the Miami University International Center, Oxford, Ohio, for building cross-cultural understanding between the peoples of the United States of America and the Union of Soviet Socialist Republics." The Will further provides that the President of Miami University, or his or her designee, is to have "…sole discretion to determine the nature of said projects…" within certain guidelines specified in the Will, and to "…determine the amounts necessary to fund said projects."

3. The Testator had a general charitable intent to provide funding for one or more programs relating to the nation, then known as the Union of Soviet Socialist Republics ("U.S.S.R."), as well as the people and institutions then or thereafter located in, or associated with, the area formerly known as the U.S.S.R., such as : presentations on the history of the Soviet Union; presentations for students and children on Soviet life; classes on Soviet-American relations; programs dealing with conflict relationships at the international level; and an endowed professorship in Soviet-American Relations, at Miami University. Such project, and many others, are fully feasible.

4. The Trustee believes that the specific purposes of the Charitable Trust can be fully carried out by the Trustee and the Beneficiary despite the fact that the

U.S.S.R. no longer exists as a country, in that: programs, including some of those specifically enumerated in the Will, and programs that relate to the people and institutions currently located within the areas formerly occupied by the U.S.S.R., all of which would be consistent with the charitable intent of the Testator. The Testator provided that the ultimate decisions about expenditures of funds from the Charitable Trust be made by the President of Miami University, in his or her sole discretion.

5. The Defendant, Miami University, has proposed a plan to implement the terms of the Charitable Trust as set forth in the memorandum attached hereto and marked as "Exhibit B".

6. This is an action for declaratory judgment pursuant to 2721.05 of the Ohio Revised Code for the purpose of determining a question of construction of the Charitable Trust which is in controversy between the parties.

7. Jurisdiction of this action is based on 2101.24 of the Ohio Revised Code, which grants the Probate Court jurisdiction to render declaratory judgments.

8. Plaintiff is a federally-chartered banking institution, operating a trust department, with its principal office in Hamilton, Ohio. Plaintiff is the Trustee of the Charitable Trust.

9. Plaintiff believes that all persons who have any interest or claim which would be affected by a declaratory judgment of this Court have been made parties pursuant to 2721.12 and 109.30 of the Ohio Revised Code.

10. Defendant Attorney General of Ohio is a necessary party pursuant to 109.25 of the Ohio Revised Code.

11. Defendant Miami University is a state institution of higher education in the State of Ohio, and is the beneficiary of the Charitable Trust.

12. Plaintiff believes that the terms of the Charitable Trust, as set out in the Will, create no reversionary interest in any heirs of the Donor.

13. Plaintiff is uncertain as to the extent of its authority under the law and the terms of the Charitable Trust. It requires the guidance and approval of this Court in order to fully carry out the intentions of the Testator.

WHEREFORE, plaintiff requests the guidance and approval of this Court, and that this Court issue a declaratory judgment, pursuant to 2721.05 of the Ohio Revised Code, as follows:

A. Holding that all necessary parties have been joined in this action.

B. Holding that the terms of the Charitable Trust, as set out in the Will, create no reversionary interest in the heirs of the Testator

C. Holding that the Charitable Trust is to be fully funded and carried out, in accordance with its terms

D. Holding that the Trustee, consistent with the charitable intent of the Testator, is authorized by the terms of the Will to provide funding, as otherwise authorized by the Will, for programs related to the U.S.S.R. as it previously existed; for programs related to the people and institutions previously or currently located within the areas formerly occupied by the U.S.S.R.; and for other programs coming within the scope of the Charitable Trust as reasonably interpreted by the President of Miami University in the exercise of his or her sole discretion pursuant to the terms of the Charitable Trust, and as generally set forth in Exhibit B.

Respectfully submitted,

ROBINSON & LIPNICKEY CO.,L.P.A.

By: /s/ James G. Robinson
James G. Robinson A268, 0003513
Attorney for Plaintiff
Park Place West
Oxford, OH 45056
(513) 523-4111

REGARDING EXHIBIT A TO THE COMPLAINT

Exhibit A to the Complaint, the Last Will and Testament of Walter Havighurst, was attached to the Complaint but is not reproduced here in the interests of brevity. However, the trial court's Finding of Fact No. 4 . sets forth Item III of the Will (which contains all provisions relevant to the testamentary trust) in its virtual entirety and in the testator's own words.

Comparison of Selected Findings of Fact and Conclusions of Law As Set Out by the Butler County, Ohio Court of Common Pleas-Probate Division

Finding of Fact	Conclusion of Law
-No.27-	-No.11-
"The primary purpose of Walter E. Havighurst establishing this charitable trust was to fund and promote education and more particularly to fund and promote educational projects that would help build cross-cultural understanding between the 'peoples' of the United States of America and what was known in 1988 as the Union of Soviet Socialist Republics."	"The Testator's primary purpose in establishing this charitable trust was to fund and promote educational projects that would help build cross-cultural understanding between the 'peoples' of the United States of America and what was known in 1988 as the Union of Soviet Socialist Republics."
-No.28-	-No.28-
"Walter E. Havighurst intended the terms 'Union of Soviet Socialist Republics', 'Soviet Union', and 'Soviet',as these terms were used in his Last Will and Testament, to primarily be descriptive of the "peoples" that inhabited that area of the world."	"The testator intended the terms 'Union of Soviet Socialist Republics", 'Soviet Union', and 'Soviet', as these terms were used in his Last Will and Testament, to primarily be descriptive of the 'peoples' that inhabited that area of the world."

and

Finding of Fact	Conclusion of Law
	-No. 22- "The testator intended the terms 'Union of Soviet Socialist Republics', 'Soviet Union',and'Soviet', as these terms were used in his Last Will and Testament, to primarily be descriptive of 'peoples' that inhabited that area of the world."
-No. 29- "The fact that the 'Union of Soviet Socialist Republics' no longer exists as a political entity is of no importance in carrying out the terms of the trust in accordance with the intent of Walter E. Havighurst."	-No. 13- "The fact that the 'Union of Soviet Socialist Republics' no longer exists as a political entity is of no importance in carrying out the terms of the trust in accordance with the intent of Walter E. Havighurst."
-No.26- "The continued existence of the political entity formerly known as the "Union of Soviet Socialist Republics" was not intended by the testator to be an integral factor in in the testator's overall plan	- No.10- "The continued existence of the political entity formerly known as the "Union of Soviet Socialist Republics" was not intended by the testator to be an integral factor in

Finding of Fact	Conclusion of Law
No.26 (cont'd.)	No.10 (cont'd.)
concerning the creation and administration of the Walter E. Havighurst Fund."	the testator's overall plan concerning the creation and administration of the Walter E. Havighurst Fund."

-

EXCERPTS FROM BRIEFS INDICATING THE RAISING OF THE FEDERAL QUESTIONS

Petitioners set out their claims to deprivation of equal protection under the Fourteenth Amendment to the Constitution of the United States with regard to their jury demands extensively in briefing to the Court of Appeals, and the decision of the Court of Appeals (App. A-1, *infra*) clearly speaks to the federal question of denial of equal protection under the United States Constitution, Amendment Fourteen.

The "Takings" claim under the Fifth Amendment is not so dealt with by the Court of Appeals, and therefore the excerpts that follow are offered.

* * * * * * * * * *

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY, OHIO

-

FIRST NATIONAL BANK OF SOUTHWESTERN OHIO, EXECUTOR OF THE ESTATE OF WALTER E.HAVIGHURST,
Plaintiff-Appellee,

-vs -
MIAMI UNIVERSITY
and
BETTY D. MONTGOMERY, ATTORNEY GENERAL OF THE

No. CA 96-030047
-030048

STATE OF OHIO,
Defendants-Appellees,
and
ALAN W. HAVIGHURST
and
DOUGLAS A. HAVIGHURST,
Defendants-Appellants,
and
MARIAM HAVIGHURST JOHNSON, ET AL.,
Defendants.

BRIEF OF APPELLANTS

[from page 29 of brief]

"This trial court's order, however, extinguishes appellants' rights to proceeds from a lapse of the trust at some future date. This flies in the face of the established rules that "a declaration will not be made as to future rights" in a declaratory judgment action (35 Ojur.3d, Declaratory Judgments, p. 27) and, second, constitutes a "taking" of private property by a state court judge. In that regard, it is clear that the court's order in the case sub judice is state action. Shelley v. Kraemer (1948), 334 U.S. 1, 68 S.Ct. 836. Further, it violates the U.S. Constitution's prohibition of taking of private property for public use without just compensation. Skip Kirchdorfer v. U.S. (1993), 6 F. 3d 1573 (Fed. Cir.) at 1580 . . . . "

* * * * * * * * * *

IN THE SUPREME COURT OF OHIO

FIRST NATIONAL BANK OF
SOUTHWESTERN OHIO, Executor
Of the Estate of Walter E. Havighurst
v.
MIAMI UNIVERSITY
and
BETTY D. MONTGOMERY,
Ohio Attorney
General
Defendants-Appellees
and
ALAN W. HAVIGHURST and
DOUGLAS HAVIGHURST
Defendants-Appellants
and
MARIAM HAVIGHURST JOHNSON et al.
Defendants

Court of Appeals
Case Nos. CA9603047
CA9603048

FILED
JUL 15 1997
Marcia Mengel,
Clerk, Supreme
Court of Ohio

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANTS ALAN W. HAVIGHURST AND DOUGLAS HAVIGHURST

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1632 Woodville Pike
Loveland, Ohio 45140
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101 E. Town Street
Columbus, Ohio 43215

TABLE OF CONTENTS

EXPLANATION OF WHY THIS IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION . . . . . .

Authorities
U.S. Constitution, Fifth Amendment..
Ohio Constitution, Section 19, Article I
Shelley v. Kraemer (1948), 334 U.S. 1...
U.S. Constitution, Fourteenth Amendment
Ohio Constitution, Sections 2,5,16 Article I..... . . . . .
R.C. 2311.04. . . . . .
R.C. 2101.31. . . . . .
Sorrell v. Thevenir (1994), 623 N.E.2d 504, 69 Ohio St.3d 415 . . . . . .
Phila. Baptist Assoc. v. Hart (1819), 17 U.S. 1 . . . . . .

* * *

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

PROPOSITION OF LAW NO. 1:- The extinction, in favor of a state instrumentality, of the reversionary interests of heirs at law in a testamentary charitable trust is an unconstitutional taking of private property for public use without just compensation.

* * *

PROPOSITION OF LAW NO. 2: Where trial by jury is mandatory in one division of the common pleas court, it is a denial of

due process and equal protection that trial by jury is merely discretionary in another division of the same court on the same claims and questions of fact.

* * *

The appellate court herein created a conflict of laws by holding that the right to jury is not a fundamental right, in employing the rational basis test as opposed to the required strict scrutiny test, and, accordingly, failing to find any compelling state interest served by R.C. 2101.31. Sorrell, supra.

Both lower courts rely upon Benee v. Sanders (1953), 160 Ohio St. 279, 116 N.E.2d 420. That position is based on R.C. 2101.31, a 1953 statute, viz., that a jury in declaratory judgment actions in probate court is discretionary. Appellants say the right to jury in this case is mandatory. The appellate court's holding stems from the outmoded proposition set forth in the Fifth Syllabus of Sanders, supra, which says, in part, "questions of fact arising in trial of the issues shall be determined by the probate judge. . . unless in the exercise of his discretion"he orders those questions be tried by a jury.

The Modern Courts Amendment of 1967, R.C. 2101.24 (most recently amended in 1995) and R.C. 2311.04 (most recently amended in 1976) change the rule of Sanders, supra. The latter statute provides a mandatory trial by jury, as follows: "Issues of fact arising in actions for the recovery of money only or ...personal property shall

be tried by a jury...." (emphasis added).

* * *

The question thus becomes that of which statute shall govern. The answer to the question--in favor of appellants--is made manifest in consideration of the due process/equal protection aspect of the argument. Given the change in Ohio law since Sanders, the mandatory right of R.C. 2311.04 must extend to appropriate actions in the probate court, and R.C. 2101.31 is unconstitutional as applied.

The question thus becomes that of which statute shall govern. The answer to the question -- in favor of appellants -- is made manifest in consideration of the due process/equal protection aspect of the argument. Given the change in Ohio law since Sanders, the mandatory right of R.C. 2311.04 must extend to appropriate actions in the probate court, and R.C. 2101.31 is unconstitutional as applied.

Thus, it is abundantly clear that this case could have begun in the general division of common pleas court. R.C. 2101.24(B)(1)(b) establishes concurrent jurisdiction in the probate and the general division for actions involving charitable trusts. That declaratory judgment actions involving charitable trusts have been tried in the general division is exemplified by the cases of Fenn College et al. v; Nance et al. (1965), 33 Ohio Op.2d 292, 210 N.E.2d 418, (Common Pleas, Cuyahoga County) and DeMar v. Mosley (1993), 619 N.E.2d 1239, 63 Ohio Misc.2d 102. It is equally clear

the mandatory jury rule of R.C. 2311.04 would have applied in the general division.

Accordingly, the appellants herein are being subjected to a denial of due process of law in violation of R.C. 2311.04 and equal protection standards. U.S. Constitution, Fifth, Seventh, and Fourteenth Amendments; Ohio Constitution, Art. I, Secs. 2, 5, 16. The right to jury trial is a fundamental, substantive, and not a mere procedural right. Kneisley v. Lattimer Steven Co. (1988), 40 Ohio St.3d 354, 533 N.E.2d 743 at 746. The denial of a jury trial where factual issues were in controversy denied appellants "a fundamental constitutional right" and "a substantial right." Cleveland Ry. v. Halliday (1933), 127 Ohio St. 278, 284. It existed when the Ohio constitution was adopted in 1851; Allison v. McCune, supra.